

GUARANTEE AND INDEMNITY

This Guarantee is made on the date specified in item 1 of the Schedule

between

the person(s) named in item 2 of the Schedule (**Guarantor**)

and

FSL NOMINEES (AUST) PTY LTD (ACN 159 237 724) trading as Melbourne Markets Credit Service Joint Venture (the **MMCS**).

BACKGROUND

- A. At the request of the Guarantor, the MMCS has agreed to enter into the Buyer Agreement as agent for the Seller.
- B. The Guarantor acknowledges that the MMCS is entering into the Buyer Agreement in reliance on this Guarantee.

OPERATIVE PROVISIONS

1 Definitions and interpretation

1.1 Definitions

In this Guarantee, including the background, unless the context otherwise requires:

Buyer Agreement means the agreement between the MMCS and the Buyer authorising the MMCS to act as agent on behalf of a Buyer in respect of the MMCS's credit services as set out in the Rules.

Buyer means the person named in item 2 of the Schedule.

Buyer's Obligations means the due and punctual observance and performance by the Buyer of all its liabilities, obligations and agreements (whether monetary or non-monetary, present or future, actual or contingent) to the MMCS arising under or in connection with the Buyer Agreement.

Guarantee means this guarantee and indemnity including the schedule.

PPSA means *Personal Properties Securities Act 2009* (Cth).

Seller means any person affected by the failure to perform the Buyer's Obligations who has entered into a Sellers Agreement with the MMCS, whether prior to, on or after the date of this Guarantee.

Sellers Agreement means the agreement between the MMCS and a Seller authorising the MMCS to act as agent on behalf of a Seller in respect of the MMCS's credit services as set out in the Rules.

1.2 Interpretation

In this Guarantee, including the background, unless the context otherwise requires:

- (a) a singular word includes the plural and vice versa;
- (b) words denoting individuals include corporations, authorities, government and governmental agencies, and vice versa;
- (c) words which suggest one gender include the other gender;
- (d) headings are for convenience only and do not affect interpretation;
- (e) reference to background, clauses and schedules are references to background, clauses and schedules of or to this Guarantee; and
- (f) references to any agreement or document include that agreement or document as amended, novated, supplemented or replaced from time to time.

2 Guarantee

In consideration of the MMCS entering into the Buyer Agreement at the Guarantor's request, the Guarantor unconditionally guarantees the Buyer's Obligations.

3 Nature of Guarantee

This Guarantee:

- (a) is a principal obligation and is not ancillary or collateral to any other right or obligation however created or arising;
- (b) may be enforced against the Guarantor without the MMCS first being required to exhaust any remedy it may have against the Buyer or to enforce any security it may hold relating to the Buyer's Obligations;
- (c) is a continuing Guarantee and indemnity for the whole of the Buyer's Obligations; and
- (d) is absolute, unconditional and irrevocable, and remains in full force and effect until the Buyer's Obligations have been irrevocably discharged in full despite any transaction or other thing (including a settlement of account or intervening payment).

4 Interest

- (a) The Guarantor must pay interest at the rate specified below on each part of the Buyer's Obligations which is a monetary amount from time to time owing under this Guarantee that is not paid when due, from the day on which it falls due.
- (b) Interest on any amounts referred to in paragraph 4(a) accrues each day at the same rate and in the same manner as the Buyer is required to pay interest in respect of the Buyer's Obligations under the Buyer Agreement both before and (as a separate, independent obligation) after any judgment.

5 Guarantor's liability absolute

- (a) The liability of the Guarantor is absolute and is not affected by any circumstance, act, omission, matter or thing which, but for this provision, might otherwise affect it at law or in equity.

- (b) The MMCS is under no obligation to give notice to the Guarantor of any default by the Buyer or to include in any demand made under this Guarantee particulars of the default of the Buyer resulting in the demand.
- (c) The MMCS is under no obligation to marshal in favour of the Guarantor any security now or in the future held by the MMCS or any funds or assets that the MMCS may be entitled to receive or claim.
- (d) This Guarantee extends to cover the Buyer Agreement as amended, varied or replaced, either with or without the consent of the Guarantor.

6 Limitations on Guarantor's rights

Until the Buyer's Obligations have been irrevocably performed in full the Guarantor will not:

- (a) be entitled to share in any security held or money received by the MMCS or exercise any right of subrogation to the MMCS in respect of any security or money;
- (b) take any steps to enforce a right or claim against the Buyer in respect of any money paid by the Guarantor to the MMCS under this Guarantee; or
- (c) exercise any rights as surety in competition with the MMCS.

7 Set Off

The MMCS, without notice to the Guarantor, may combine any account that the Guarantor holds with the MMCS with, or any amount that is or may become owing by the MMCS to the Guarantor against, any amount owing by the Guarantor to the MMCS under this Guarantee. For this purpose, the MMCS may:

- (a) vary the terms and conditions (including the repayment date) of any part of any account, deposit of funds, or other arrangement between the parties;
- (b) effect any currency conversion that the MMCS considers necessary or desirable; and
- (c) in the name of the Guarantor, do all acts and execute all documents as may be required to effect any combination, consolidation, merger or application under this clause.

8 Insolvency of Buyer

If the Buyer becomes insolvent, the Guarantor authorises the MMCS to prove for all moneys which the Guarantor has paid under this Guarantee and to retain and to carry into a suspense account and appropriate at the discretion of the MMCS any dividends received in the liquidation, bankruptcy or other insolvency of the Buyer and other moneys received in relation to the Buyer's Obligations until the Buyer's Obligations have been irrevocably performed in full.

9 Settlement, discharge or release

If an amount is applied against any of the Buyer's Obligations and the MMCS forms the opinion in good faith that it is obliged to pay the amount paid by the Buyer or Guarantor to any person under any law relating to bankruptcy, winding up or the protection of creditors:

- (a) the MMCS's rights are to be reinstated and will be the same in relation to that amount as if the application or the payment or transaction giving rise to it, had not been made; and

- (b) the Guarantor must immediately do anything (including the signing of documents) required by the MMCS to restore to the MMCS any guarantee or security to which it was entitled immediately before that application or the payment or transaction giving rise to it.

10 Indemnity

If the whole or any part of the Buyer's Obligations are not enforceable against the Buyer by the MMCS for any reason whatsoever, and the Buyer's Obligations are not enforceable against the Guarantor as a surety, then:

- (a) the Guarantor as a separate and severable liability under this Guarantee unconditionally and irrevocably indemnifies the MMCS in respect of the Buyer's Obligations;
- (b) as a principal debtor, the Guarantor agrees to pay the MMCS, when demanded in writing, a sum equal to the amount of the moneys due and payable under to the Buyer's Obligations, or the losses and expenses of the MMCS resulting from the failure to perform the Buyer's Obligations; and
- (c) for the purposes of this indemnity, this clause must be construed as if the moneys payable under the Buyer's Obligations were recoverable and the terms of this Guarantee apply as far as possible to this indemnity.

11 Security

- (a) The Guarantor must not take, without the written consent of the MMCS, any security from the Buyer for or in connection with this Guarantee. The Guarantor must hold any security it does take from the Buyer in trust for the MMCS and as security for the liability to the MMCS under this Guarantee.
- (b) To secure the Buyer's Obligations, the Guarantor hereby:
 - (i) grants a security interest in all of its present and after-acquired property and in all of its present and future rights in relation to any personal property (as defined in the PPSA) (**Personal Property**) to the MMCS;
 - (ii) charges all of its rights, property and undertaking of whatever kind in the Guarantor's name or under its control and wherever situated, whether present or future including, without limitation, its capital and any interest in real property both legal and beneficial, in freehold and leasehold land (other than any Personal Property to which the PPSA applies) to the MMCS; and
 - (iii) agrees to mortgage all of its present and future interests in any real property to the MMCS, as security for the performance of its obligations under this Agreement including payment of the amounts payable under the Buyer Agreement.
- (c) The Guarantor must, within 10 days of request from the MMCS, execute such documents as the MMCS requires to perfect the security interest, charge and mortgage. The Guarantor must pay on demand any stamp duty (including any fines and penalties) assessed in connection with the security interest, charge and mortgage. The costs of registering a financing statement will be paid by the Guarantor.
- (d) The Guarantor acknowledges that the MMCS, by virtue of the charge and mortgage, has a caveatable interest in any real property of the Guarantor which is or becomes subject to the charge and/or mortgage and may lodge a caveat over that property.

- (e) If the Guarantor fails for any reason to meet its obligations under this Guarantee when requested to do so by the MMCS, the Guarantor specifically authorises and consents to the MMCS lodging a caveat over the Guarantor's land preventing any subsequent dealings with the Guarantor's land.
- (f) The MMCS may release or otherwise deal (either in whole or in part) with any and all securities now or in the future held by the MMCS for the Buyer's Obligations and the Guarantor's obligations under this Guarantee without releasing or affecting the liability of the Guarantor under this Guarantee. The Guarantor may not hold the MMCS responsible or liable for any loss, damage or expense suffered by the Guarantor as a result (either direct or indirect) of that release or dealing (including any prejudice to or loss of the Guarantor's rights of subrogation).

12 Joint and several Guarantee

- (a) Any condition or agreement under this Guarantee by or in favour of two or more persons is deemed to bind them jointly and severally, or be in favour of each of them severally. If the Guarantor comprises more than one person the MMCS may at any time, and from time to time, proceed against any or all of them in respect of the Guarantor's Obligations as the Beneficiary may choose in its absolute discretion, and the Beneficiary is not to be obliged to make any claim against all the persons comprising the Guarantor. A release by the MMCS of any Guarantor from this Guarantee will not affect the liability of the other Guarantors.
- (b) This Guarantee may be enforced against the Guarantor by the MMCS and/or any Seller either alone, jointly, severally, or jointly and severally with any other person.

13 Execution by less than all parties

This Guarantee binds each of the persons executing it although one or more of the persons named in this Guarantee as a Guarantor does not execute or is not or ceases to be bound by this Guarantee, or the MMCS does not execute or only subsequently executes this Guarantee.

14 MMCS's calculation

A statement by an authorised representative of the MMCS as to the amount for the time being owing by the Buyer or the Guarantor to the MMCS or as to the interest from time to time payable is prima facie proof of the amount and/or interest owing at that time.

15 Acknowledgment

The Guarantor acknowledges that the MMCS has executed this Guarantee and agreed to enter the Buyer Agreement in reliance on the following representations and warranties:

- (a) the Guarantor has received a copy of the Buyers Agreement and the Rules; and
- (b) the Guarantor has received independent legal advice on the nature and effect of this Guarantee or has otherwise had the opportunity to do so but has chosen not to receive such independent legal advice.

16 Discharge

16.1 Termination

This Guarantee terminates, and the Guarantor is released and discharged from all liability under this Guarantee, on the date on which a formal written discharge of this Guarantee is given by the MMCS to the Guarantor.

16.2 Entitlement to discharge

The Guarantor is only entitled to a formal written discharge of this Guarantee on the date on which all the Buyer's Obligations have been finally paid and satisfied to the MMCS in full and the obligation (if any) of the MMCS to make advances or accommodation has ceased.

17 Expenses

The Guarantor must indemnify the MMCS against all reasonable expenses incurred by the MMCS in connection with the entry into, enforcement of, or the preservation of any rights under, this Guarantee including legal expenses on a full indemnity basis and any stamp duty.

18 Assignment

The MMCS may dispose of, declare a trust over, or otherwise create an interest in its rights under this Guarantee without the consent of any other party.

19 Notices

Any demand, notice or other communication under this Guarantee must be made in writing and signed, and may be sent to the addressee either by hand, mail or fax. If it is sent by mail, it is taken to have been received on the second business day following the day after it is posted. If it is sent by fax, it is taken to have been received when the addressee actually receives it in full and legible form.

20 Waivers, remedies cumulative

- (a) No failure or delay by the MMCS in exercising any right or remedy under this Guarantee constitutes a waiver. No single or partial exercise of any right or remedy will preclude any further exercise of that or any other right or remedy.
- (b) The rights and remedies provided to the MMCS in this Guarantee are cumulative and are not exclusive of any rights or remedies provided by law.

21 Governing law and jurisdiction

- (a) This Guarantee is governed by and will be construed in all respects in accordance with the law of Victoria.
- (b) The Guarantor submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria in respect of any proceedings in connection with this Guarantee.

22 Severability of provisions

Any provision in this Guarantee which is prohibited or unenforceable is to be severed to the extent necessary to make this Guarantee enforceable, unless it would materially change the intended effect of this Guarantee.

Signing page

(If the Guarantor is an individual)

Executed as an agreement on the date specified in item 1 of the Schedule

Agreed by the Guarantor in the presence of:

Signature of Guarantor

Witness name

Witness signature

Agreed by the Guarantor in the presence of:

Signature of Guarantor

Witness name

Witness signature

Agreed by the Guarantor in the presence of:

Signature of Guarantor

Witness name

Witness signature

Signed for the MMCS in the presence of:

Signature for the MMCS

Witness name

Witness signature

Signing page

(If the Guarantor is a company)

Executed as an agreement on the date specified in item 1 of the Schedule

EXECUTED by

.....
[name of company]

in accordance with section 127 of the *Corporations Act 2001*

.....
Signature of Director

.....
Signature of Director / Company Secretary

(Please delete as applicable)

.....
Name of Director

.....
Name of Director / Company Secretary

(Please print)

(Please print)

Signed for the MMCS in the presence of:

Signature for the MMCS

Witness name

Witness signature

